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Attorneys for Jaclyn E. Adler

**FILED**  
 10 AUG 25 PM 2:53  
 CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY 

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA**

Jaclyn E. Adler

the plaintiff,

v.

Legal Recovery Law Offices, Inc.,  
 Mark D. Walsh, and Capital One  
 Bank (USA) N.A.

Case Number: ~~10 CV 1778 BEN~~ ~~BLM~~

**Complaint For Damages**

**Jury Trial Demanded**

**INTRODUCTION**

1. Jaclyn E. Adler, (the plaintiff), through the plaintiff's attorneys, brings this action to challenge the actions of Legal Recovery Law Offices, Inc. (LRL), Mark D. Walsh (Walsh), and Capital One Bank (USA) N.A. (Capital One), (jointly, "the defendants"), with regard to attempts by the defendants to unlawfully and abusively collect a debt allegedly owed by the plaintiff, and this conduct caused the plaintiff damages.

HYDE & SWIGART  
 San Diego, California

ORIGINAL

- 1 2. The plaintiff makes these allegations on information and belief, with the  
2 exception of those allegations that pertain to a plaintiff, or to a plaintiff's  
3 counsel, which the plaintiff alleges on personal knowledge.
- 4 3. While many violations are described below with specificity, this Complaint  
5 alleges violations of the statutes cited in their entirety.
- 6 4. Unless otherwise stated, all the conduct engaged in by Legal Recovery Law  
7 Offices, Inc., Mark D. Walsh, and Capital One Bank (USA) N.A. took place  
8 in California.
- 9 5. Any violations by the defendants were knowing, willful, and intentional, and  
10 the defendants did not maintain procedures reasonably adapted to avoid any  
11 such violation.

#### 12 JURISDICTION AND VENUE

- 13 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §  
14 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
- 15 7. This action arises out of the defendants' violations of the Fair Debt Collection  
16 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair  
17 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32  
18 ("Rosenthal Act").
- 19 8. Because the defendants do business within the State of California, personal  
20 jurisdiction is established.
- 21 9. Venue is proper pursuant to 28 U.S.C. § 1391.
- 22 10. At all times relevant, the defendants conducted business within the State of  
23 California.

#### 24 PARTIES

- 25 11. The plaintiff is a natural person who resides in the City of Poway, State of  
26 California.
- 27 12. The defendants are located and do business in the State of California.
- 28

- 1 13. The plaintiff is obligated or allegedly obligated to pay a debt, and is a  
2 "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
- 3 14. The defendants are persons who use an instrumentality of interstate  
4 commerce or the mails in a business the principal purpose of which is the  
5 collection of debts, or who regularly collect or attempt to collect, directly or  
6 indirectly, debts owed or due or asserted to be owed or due another and are  
7 therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
- 8 15. The plaintiff is a natural person from whom a debt collector sought to collect  
9 a consumer debt which was due and owing or alleged to be due and owing  
10 from the plaintiff, and is a "debtor" as that term is defined by California Civil  
11 Code § 1788.2(h).
- 12 16. The defendants, in the ordinary course of business, regularly, on behalf of  
13 themselves, or others, engage in debt collection as that term is defined by  
14 California Civil Code § 1788.2(b), are therefore debt collectors as that term is  
15 defined by California Civil Code § 1788.2(c).
- 16 17. This case involves money, property or their equivalent, due or owing or  
17 alleged to be due or owing from a natural person by reason of a consumer  
18 credit transaction. As such, this action arises out of a consumer debt and  
19 "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

#### FACTUAL ALLEGATIONS

- 20
- 21 18. Sometime before March 29, 2010, the plaintiff is alleged to have incurred  
22 certain financial obligations.
- 23 19. These financial obligations were primarily for personal, family or household  
24 purposes and are therefore a "debt" as that term is defined by 15 U.S.C.  
25 §1692a(5).
- 26 20. These alleged obligations were money, property, or their equivalent, which is  
27 due or owing, or alleged to be due or owing, from a natural person to another  
28 person and are therefore a "debt" as that term is defined by California Civil

1 Code §1788.2(d), and a “consumer debt” as that term is defined by California  
2 Civil Code §1788.2(f).

3 21. Sometime thereafter, but before March 29, 2010, the plaintiff allegedly fell  
4 behind in the payments allegedly owed on the alleged debt.

5 22. Subsequently, but before March 29, 2010, the alleged debt was assigned,  
6 placed, or otherwise transferred to the defendants for collection.

7 23. In reality, as the defendants knew or should have known, the plaintiff never  
8 incurred or had anything to do with this debt. In reality, as the defendants  
9 knew or should have known, the debt that the defendants alleged was owed  
10 by the plaintiff was incurred solely by the plaintiff’s father. However,  
11 because the father declared bankruptcy, the defendants decided to see if they  
12 could coerce payments from the daughter.

13 24. On or about March 29, 2010, the defendants wrote a letter to the plaintiff and  
14 demanded payment of the alleged debt.

15 25. This communication to the plaintiff was a “communication” as that term is  
16 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent  
17 with 15 U.S.C. § 1692g(a).

18 26. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)  
19 defines that phrase, and an “initial communication” consistent with Cal. Civ.  
20 Code § 1812.700(b).

21 27. Subsequently, on April 7, 2010, the plaintiff advised the defendant that she  
22 disputed the debt pursuant to 15 U.S.C. § 1692g.

23 28. Subsequently, the plaintiff also advised the defendants that the plaintiff had  
24 retained an attorney concerning the alleged debt, consistent with 15 U.S.C.  
25 §1692c(a)(2).

26 29. On or about April 15, 2010, the attorney for the plaintiff advised the  
27 defendants, in writing, that the plaintiff was represented by said attorney with  
28 respect to any consumer debt. This writing included said attorney's name and

1 address and a request that all communications regarding any consumer debt  
2 be addressed to said attorney, consistent with Cal. Civ. Code § 1788.14(c), 15  
3 U.S.C. §1692c(a)(2), and Cal. Civ. Code § 1788.17.

4 30. Thereafter, the defendant again contacted the plaintiff in an attempt to collect  
5 the alleged debt, thereby violating Cal. Civ. Code § 1788.14(c) and 15 U.S.C.  
6 §1692c(a)(2). Because this letter violated the language in 15 U.S.C.  
7 §1692c(a)(2), this letter also violated Cal. Civ. Code § 1788.17.

8 31. On or about July 1, 2010, the defendants filed a lawsuit against the plaintiff  
9 for a debt the defendants knew only too well was not owed by the plaintiff  
10 and was, instead, allegedly incurred by the plaintiff's father. The plaintiff  
11 never applied or made any charges on the credit card in question.

12 32. Because the plaintiff notified the defendant in writing within the thirty-day  
13 period described in subsection (a) of 15 U.S.C. § 1692g that the debt, or some  
14 portion thereof, was disputed, the defendant had a duty to verify the alleged  
15 debt with the plaintiff.

16 33. Because the defendant failed to verify the alleged debt with the plaintiff prior  
17 to filing a lawsuit, the defendant violated 15 U.S.C. § 1692g and Cal. Civ.  
18 Code § 1788.17.

19 34. In filing this lawsuit against the plaintiff, the defendants filed a state  
20 complaint. This state complaint was a "communication" as that term is  
21 defined by 15 U.S.C. § 1692a(2).

22 35. This state complaint was a "debt collection" as Cal. Civ. Code 1788.2(b)  
23 defines that phrase.

24 36. By filing this lawsuit the defendants are attempting to take legal action they  
25 are not legally entitled to take, in violation of 15 U.S.C. § 1692e(5) and Cal.  
26 Civ. Code § 1788.17.

27 37. By filing this lawsuit, the defendant used a false, deceptive, or misleading  
28 representation or means in connection with the collection of a debt.

1 Consequently, the defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §  
2 1692e(10).

3 38. By filing this lawsuit, the defendant used an unfair or unconscionable means  
4 to collect or attempt to collect any debt. Consequently, the defendant violated  
5 15 U.S.C. § 1692f and 1692f(1).

6 39. Because this violated certain portions of the federal Fair Debt Collection  
7 Practices Act as these portions are incorporated by reference in the Rosenthal  
8 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,  
9 this conduct or omission violated Cal. Civ. Code § 1788.17.

10 40. In the defendants' state complaint, the defendants asked for a "contractual rate  
11 of 19.80% [interest] from the date of breach." In reality, there was no  
12 contract with the plaintiff, and the contractual rate that the defendant may  
13 have had with the plaintiff's father did not include a contractual rate of  
14 19.80%. This representation is a materially false characterization of the debt  
15 because it distorts the amount of the debt allegedly owed, and, consequently,  
16 violates 15 U.S.C. § 1692e, 1692e(10), 15 U.S.C. § 1692f, 1692f(1), and Cal.  
17 Civ. Code § 1788.17.

18 41. Because this violated certain portions of the federal Fair Debt Collection  
19 Practices Act as these portions are incorporated by reference in the Rosenthal  
20 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,  
21 this conduct or omission violated Cal. Civ. Code § 1788.17.  
22  
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28

**CAUSES OF ACTION****COUNT I****FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)****15 U.S.C. §§ 1692 ET SEQ.**

42. The plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

43. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

44. As a result of each and every violation of the FDCPA, the plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every defendant, jointly and severally.

**COUNT II****ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)****CAL. CIV. CODE §§ 1788-1788.32**

45. The plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

46. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

47. As a result of each and every violation of the Rosenthal Act, the plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.



**PRAYER FOR RELIEF**

WHEREFORE, the plaintiff prays that judgment be entered against the defendant, and the plaintiff be awarded damages from the defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

48. Pursuant to the seventh amendment to the Constitution of the United States of America, the plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

**Hyde & Swigart**

Date: Aug 4, 2010

By: 

Joshua B. Swigart

Attorneys for the plaintiff



JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Jaclyn E. Adler

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart  
411 Camino Del Rio South Suite 301, San Diego, CA 92108

## DEFENDANTS

Legal Recovery law Offices, Inc., Mark D. Walsh, and Capital One Bank (USA) N.A.

County of Residence of First Listed Defendant San Diego  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys (If Known)

10 CV 1778 BEN

BLM JTY

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. § 1692 et seq

Brief description of cause:  
FDCPA

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$  
75,001.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/25/10

FOR OFFICE USE ONLY

RECEIPT #

17333

AMOUNT

\$35.5

APPLYING IFP

JUDGE

MAG. JUDGE

ORIGINAL

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS017333  
Cashier ID: bhartman  
Transaction Date: 08/25/2010  
Payer Name: HYDE AND SWIGART

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CIVIL FILING FEE  
For: ADLER V LEGAL RECOVERY LAW OFF  
Case/Party: D-CAS-3-10-CV-001778-001  
Amount: \$350.00

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CHECK  
Check/Money Order Num: 4054  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.